

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Case No.: 02-42606

Thomas J. Wesely,

Chapter 13 Case

Debtor(s).

**TRUSTEE'S RESPONSE TO DEBTOR'S MOTION TO VACATE ORDER OF
DISMISSAL**

TO: All parties in interest pursuant to Local Rule 9013-3.

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), by and through her undersigned counsel, makes the following response to the debtor's motion to vacate order of dismissal (the "Motion").

2. The court will hold a hearing on the Motion at 9:30 a.m. on October 6, 2004, in Courtroom No. 8 West, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. As of September 27, 2004, the debtor(s) have paid the Trustee a total of \$7,200. The debtor is in arrears in payments to the Trustee in the amount of \$2,100, not including the payment due for the month of September 2004.

4. The Motion asks that the dismissal be vacated, yet it does not specifically address the issue of how and when the debtor proposes to cure the arrearages in his plan payments.

5. FRBP 9024 incorporates by reference FRCP 60, with exceptions not relevant here. FRCP 60(b) allows a court to grant relief from an order or judgment on the grounds of mistake, inadvertence, or excusable neglect, among other things. The Trustee accepts the fact that adequate grounds exist to vacate the dismissal of this case.

6. The Trustee has redrafted the proposed order in this case, to specifically provide that upon the dismissal being vacated the Trustee's motion to dismiss will be continued to October 21, 2004 at 10:30 a.m. before this same Court. **The debtor and counsel are both advised that the Trustee will seek dismissal of the case on October 21, 2004, unless the debtor becomes completely current in his plan payments prior to that date, or otherwise responds to the Trustee's motion to dismiss.**

WHEREFORE, the Trustee prays that the Court enter the attached proposed order, and such other relief as appears just and equitable.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: September 27, 2004

Signed: /e/ Thomas E. Johnson
Thomas E. Johnson, ID # 52000
Margaret H. Culp, ID # 180609
Counsel for Chapter 13 Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Thomas E. Johnson, employed by Jasmine Z. Keller, the Chapter 13 Trustee, declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 27, 2004

Signed: /e/ Thomas E. Johnson

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 27, 2004, I served Trustee's Response to Motion to Vacate Order of Dismissal on the individual(s) listed below, in the manner described:

By e-mail:

United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

By first class U.S. mail, postage prepaid:

Thomas J. Wesely
5101 Halifax Ave. S.
Edina, MN 55424

Malin D. Greenberg, Esq.
Attorney at Law
Suite 1525, Interchange Tower
600 South Hwy. 169
St. Louis Park, MN 55426

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 27, 2004

/e/ Thomas E. Johnson

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

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ORDER REGARDING MOTION TO VACATE ORDER OF DISMISSAL

At Minneapolis, MN, _____ 2004.

The above-entitled matter came before the undersigned United States Bankruptcy Judge on the motion of the debtor to vacate the order of dismissal of this case dated and entered on August 24, 2004.

Appearances, if any, were noted in the minutes.

Upon the debtor's motion, the response of Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), and all of the files, records and proceedings herein,

IT IS ORDERED:

1. The order dismissing this case dated August 24, 2004, is hereby vacated and this Chapter 13 case is hereby reinstated.
2. The hearing on the Trustee's motion to dismiss is continued to October 21, 2004 at 10:30 a.m., before this Court, in courtroom 8 West, U.S. Courthouse, 300 South 4th Street, Minneapolis, MN.
3. The Clerk of this Court shall mail copies of this Order as notice hereof to the Debtor(s), the Debtor(s) attorney, the Chapter 13 Trustee, the United States Trustee, and all creditors and other parties in interest.

Robert J. Kressel
United States Bankruptcy Judge